

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/237,605 01/25/99 LAZZARA

R IMPI. 035-1

0M32/0821

EXAMINER

HAROLD N. WELLS  
JENKENS & GILCHRIST, P.C.  
3200 FOUNTAIN PLACE  
1445 ROSS AVENUE  
DALLAS TX 75202-2799

PREFILED, P

ART UNIT

PAPER NUMBER

29

3738

DATE MAILED:

08/21/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Advisory Action</b>	Application No. <b>09/237,605</b>	Applicant(s) <b>Lazzara et al</b>
	Examiner <b>Paul Prebilic</b>	Art Unit <b>3738</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Aug 7, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**THE PERIOD FOR REPLY [check only a) or b)]**

a)  The period for reply expires 4 months from the mailing date of the final rejection.

b)  In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_ . Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.  The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.

3.  The proposed amendment(s) will not be entered because:

- (a)  they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b)  they raise the issue of new matter. (See NOTE below);
- (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

4.  Applicant's reply has overcome the following rejection(s):  
The specification objection and the declaration objection have been overcome

5.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).

6.  The a)  affidavit, b)  exhibit, or c)  request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
It is not persuasive in the "substantially" renders the claim scope quite broad such that Kruger reads thereon. Also, there is no clear dividing line between what constitutes "substantially uniform" and what does not.

7.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8.  For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):  
 Claim(s) allowed: \_\_\_\_\_  
 Claim(s) objected to: \_\_\_\_\_  
 Claim(s) rejected: 11-50

9.  The proposed drawing correction filed on \_\_\_\_\_ a)  has b)  has not been approved by the Examiner.

10.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

11.  Other:The IDS filed August 6, 2001 has not been considered because it does not contain a certification as required.

  
**PAUL PREBILIC**  
 PRIMARY EXAMINER  
 ART UNIT 3738

## Attachment for PTO-948 (Rev. 03/01, or earlier)

6/18/01

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTO-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

#### **2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

#### **Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.